

House Committee on Energy and Commerce
Subcommittee on Oversight and Investigations

WRITTEN STATEMENT

Frank P. Dickson Jr., Esquire
Laboratory Counsel
Los Alamos National Laboratory
March 12, 2003

Mr. Chairman, Mr. Deutsch, and distinguished members of the Committee. Thank you for the opportunity to address the Committee today.

My name is Frank P. Dickson. I am a native of Corsicana, Texas, and I graduated from Baylor University Law School in 1965. From 1966 until 1990, I practiced law in Santa Fe and Albuquerque, New Mexico; and in 1990, I came to the Los Alamos National Laboratory where I became Laboratory Counsel in 1997.

Throughout 2002, I had a “dual report” to the General Counsel of the University of California, and to the Director of the Laboratory (including his Principal Deputy Laboratory Director).

Messrs. Walp and Doran have testified to this committee that I obstructed justice, interfered with FBI investigations, impeded their investigations, and attempted to cover up fraud, theft, and wrongdoing at the Laboratory. These allegations are incorrect and misstate the complex role relating to these investigations assigned to me and the Office of Laboratory Counsel.

In all of my actions as Laboratory Counsel on these matters, I had three goals: (1) to make sure the Laboratory had accurate and sufficient information to make appropriate decisions regarding national security concerns; (2) to make sure I provided accurate and timely information to the various entities (the FBI, the DOE, and the United States Attorney’s Office) so they could take appropriate actions; and (3) to make sure the Laboratory had accurate information upon which to make appropriate employment decisions regarding its workforce.

Shortly after discovery of the “Mustang case” which involved the apparent use of a Laboratory purchase card to acquire a Mustang automobile, Laboratory management recommended that the University undertake a comprehensive, independent review of its entire purchase card program to identify vulnerabilities and develop recommendations designed to prevent future abuses and to identify cases of fraud, waste and abuse. Based upon this recommendation, the University directed the charter of a review team consisting of two former and highly regarded inspectors general from federal agencies and a forensic unit from the University’s outside auditor, PricewaterhouseCoopers, to conduct the review.

Because this review team would be working in areas that would overlap with known or expected federal investigations, I was asked to coordinate with these external agencies and within the Laboratory to assure that the Purchase Card Review Team had the information it needed to perform its important work and to assure appropriate coordination with affected law enforcement and other agencies.

As Laboratory Counsel, I represented the Laboratory's legal interests throughout the Wen Ho Lee investigation in 1999-2000, and during the "missing hard drive" incident in the spring and summer of 2000. Both of these cases involved extremely complicated interactions with people throughout the government, the University and the Laboratory. Through this experience, I developed a thorough understanding of the multiple important issues that arise in these situations and an understanding of the requirements and limits on what we should and should not do.

Although cooperation with law enforcement, including the FBI, is of prime importance, there are other issues of extreme importance to the Laboratory and the government in these situations, including: (1) the Laboratory's responsibility for national security, which includes ensuring that only reliable persons have access to classified information and sensitive facilities; (2) the Laboratory's responsibility to keep DOE and other program sponsors fully informed of unusual events that might impact the safety and security of their programs; (3) the Laboratory's need to have accurate information to make appropriate employment decisions and protect the safety and security of its workforce; and (4) the Laboratory's responsibility to protect government property. There are often no easy answers to many of the situations that arise, because of the multiple, parallel and somewhat competing interest of the various individuals and entities that may become involved; and the role of Laboratory Counsel is to help chart a path that deals with all of these issues as effectively as possible.

I believe that a careful study of all of the facts will demonstrate that I and the members of Laboratory Counsel staff carefully coordinated our efforts with the DOE Office of the Inspector General and the FBI. I believe that the facts will demonstrate that our efforts were directed to advancing the work of the purchase card review team and following up on efforts to deal with problems disclosed by its work. Another major effort was to assure that Laboratory management had access to all information necessary to perform its role.

It was clear to me that Messrs. Walp and Doran were primarily focused on possible criminal prosecutions and did not agree with, appreciate or understand the importance of the other elements of my responsibilities. The resistance I encountered from Messrs. Walp and Doran, and the inadequate information I received from them, impeded my ability to do my job.

I have never prevented anybody from uncovering fraud, theft or other wrongdoing at the Laboratory. In fact, the Purchase Card Review Team was publicly

announced and its work was, from the beginning, intended to be fully disclosed to all interested government entities as well as the public. I believe the aggressive response to the Mustang issue designed by the University and Laboratory management was a strong, open and creative response to the obvious concerns raised by the Mustang issue; and my goal has been to do what I could to assure that the review team had everything it needed to do its work completely and in a timely fashion. My goal was, is, and will be to provide complete and accurate information to the FBI, the United States Attorney, the DOE, and the University, to assist them in their roles.

Principal Deputy Laboratory Director Joseph Salgado directed that information and documents be sent to my office for transmittal to the interested agencies. This was done not to censor or withhold information, but to keep track of what information was being provided, and to ensure that information was provided.

The following narrative describes my involvement in the specific matters that have been the subject of this committee's investigation.

The "TA-33 Incident"

I first became aware of the "TA-33 incident" around July 1, 2002, from S Division Leader Stanley Busboom, shortly after the FBI decided to open a criminal investigation into the matter.

The allegations were that several (three to eight) Laboratory employees were stealing government property and storing the material at TA-33. TA-33 is a highly sensitive area at the Laboratory. The Laboratory's Office of Security Inquiries (OSI) was responsible to act as liaison with FBI Special Agent Jeff Campbell. Mr. Walp, as office leader at OSI, was directed by Laboratory management to work closely with the Office of Laboratory Counsel and to keep me advised of the progress of the investigation. The continuing presence in the workplace of Laboratory employees who were suspected of theft and who worked in a highly sensitive and secure location was of great concern to me. It raised national security concerns and employment concerns. I remember that Congress criticized the FBI and the Laboratory for permitting Wen Ho Lee to remain in a position where he had access to classified information.

In order to understand the issues involved and to determine the appropriate action to take, it was necessary for the Laboratory to investigate and have access to information regarding these allegations. Therefore, at my request, a senior staff attorney, Christine Chandler, initiated discussions with Mr. Walp and Mr. Campbell, and it was agreed that Mr. Walp or Mr. Doran would be permitted to participate in FBI interviews on this matter, and would develop and make available to my office written summaries of those interviews. The FBI recognized the need for the Laboratory to have access to this information, and to conduct a parallel investigation with the FBI. However, Messrs. Walp and Doran apparently viewed my efforts to obtain this information as unwarranted interference with their

role in assisting the FBI, and they were reluctant to share the information they gathered with me.

On August 7, 2002, Mr. Salgado and I met with the FBI's Special Agent-in-Charge for New Mexico at his office in Albuquerque to coordinate the TA-33 matter, the Mustang case, and other related issues. The principal results of that meeting were an agreement that representatives of OSI would assist the FBI in its investigations, conduct a parallel investigation to keep management informed of the circumstances and assure the Laboratory of an investigatory record if administrative action were required. An agreement was reached that OSI staff would keep a parallel set of notes. During that meeting, the FBI was informed of the very sensitive nature of the activities at TA-33 and the Laboratory's concerns about leaving employees suspected of criminal conspiracy in that location.

On August 12, 2002, I met with FBI Special Agent Mike Lowe, Special Agent Jeff Campbell, John E. "Gene" Tucker, Deputy Director of the Laboratory's Security Division, and Kenneth Schiffer, the Laboratory's Internal Security Officer, to talk further about security and counterintelligence concerns that might exist at TA-33 and how that might effect the on-going investigation. The FBI was informed that the Laboratory had certain reporting requirements regarding highly sensitive work and that at some point, the sponsors of the work in TA-33 would need to be informed of the situation there.

Because of security concerns, the Laboratory wanted to remove the suspects from the workplace as soon as possible. I had several discussions with the FBI about their plans to serve search warrants on the suspects and search their residences. We were told that until the warrants were served, it was important that the suspects remain unaware that they were under investigation.

Because of the continuing presence of suspects at TA-33, Mr. Salgado and I met with the FBI Special Agent in Charge in Albuquerque and representatives of the Office of the U.S. Attorney on October 24, 2002. The FBI indicated that it was not yet prepared to serve the warrants, and requested that the Laboratory not take any action against the suspect employees for another forty-five days. In response to our questions concerning the status of the investigation, Mr. Salgado and I were informed (1) that the investigation focused on two Laboratory employees only, (2) that sufficient evidence existed for the indictment and conviction of those two employees, (3) that the FBI was not inquiring into other potential suspects which might delay the investigation and (4) that the purpose of the requested delay was to see if the suspects would take more property which might enhance the possibility of a conviction or the severity of the sentence.

Mr. Salgado asked the FBI and the U.S. Attorney whether we were being told to defer action to remove the suspects from the sensitive areas. After some discussion, we were told that the decision rested with the Laboratory and we were not being directed to do anything. Mr. Salgado informed the FBI and the U.S.

Attorney that we needed to discuss the issue with other Laboratory managers and would reply after having met with those managers in Los Alamos.

Upon returning to the Laboratory, Mr. Salgado convened a series of meetings with involved Laboratory managers to assess the magnitude of the security issues. Those managers conferred with program sponsors who were concerned about the presence of the suspects in the sensitive areas and wanted them removed. I was instructed by Mr. Salgado to inform the FBI that the Laboratory would read the two suspects out of the program, thereby denying them access to TA-33, and assign them to other work, on October 31, 2002. This was not an effort to “force the FBI to take premature investigative action,” as Mr. Walp alleges. It was an effort to remove criminal suspects from access to ultra-sensitive classified information while the FBI continued its investigation.

Mr. Walp has told this committee that I “attempted to gain entry” into TA-33, thereby placing the FBI investigation in jeopardy. John Tapia, a Laboratory employee who was working with Messrs. Walp and Doran, told me that Messrs. Walp, Doran and Campbell thought it was important that I personally visit TA-33. I agreed to the request; however, on the evening scheduled for the visit, I received a call from Special Agent Campbell asking me not to make such a visit, because of the risk of being observed. The FBI was concerned that the suspects not be alerted that they were under suspicion. I readily agreed with Mr. Campbell, and never visited the site. Mr. Walp’s statement that I “became irate at Doran and Walp because they failed to cajole the FBI into allowing [me] access” is not correct. I have never discussed this issue with either Mr. Walp or Mr. Doran.

The Laboratory’s Audits and Assessments Office was also conducting investigations into activity at TA-33. I informed Katherine Brittin, the director of Audits and Assessments, that an employee on her shift was a potential suspect. I informed her of this after consultations with the FBI and senior Laboratory managers, because I did not want Ms. Brittin inadvertently to make any statements to this potential suspect that might alert him to the ongoing criminal investigation, and thereby compromise it. My action was an effort to protect, not to jeopardize, the FBI’s investigation.

The “Mustang Case”

I became aware of the “Mustang case” on or about July 29, 2002, when I returned from vacation. I was told that a Laboratory employee was suspected of having attempted to purchase a Ford Mustang automobile, and various auto parts, on a Laboratory credit card from a company in Arizona named “All Mustang.” Mr. Salgado took an active interest in the investigation of this case. He directed Mr. Walp or Mr. Doran to travel to Phoenix to interview the company that had recorded the charge, and directed OSI to provide its investigative reports directly to me.

The FBI took over investigation of this case on or about August 2. I informed the DOE OIG of the case in late August. On August 7, 2002, Mr. Salgado and I met with FBI Special Agent in Charge Andreas Stephens and Mr. Campbell at FBI headquarters in Albuquerque. There were several topics of discussion at the meeting: (1) Mr. Salgado informed the FBI of the importance of the Mustang case to the Laboratory and the need for the FBI to move forward with the investigation as quickly as possible. (2) Mr. Salgado informed the FBI that he was concerned about the national security implications of having suspected felons continuing to work in TA-33, a sensitive area, and that there was a need to move the TA-33 investigation forward quickly, as well. (3) Mr. Salgado informed the FBI that the Laboratory had security responsibilities that may impose limitations on FBI access to people and facilities, and that may require the Laboratory to make reports of the situation through their own chain of command. It would be important for the Laboratory and the FBI to coordinate. (4) Mr. Salgado and I informed the FBI that the Laboratory was conducting internal investigations into the purchase card program and the Mustang case, and that we would need to review our own records and meet with our own employees to gather information. Mr. Stephens agreed that the Laboratory should have access to its own records, but that it should coordinate with the FBI before interviewing witnesses. (5) The Laboratory was interested in getting reports of information discovered in the FBI investigations and would either need access to FBI reports, or be allowed to prepare its own reports. We agreed that Mr. Doran would accompany Mr. Campbell on witness interviews and prepare his own investigation reports for Laboratory internal use. Finally, we agreed to meet again on August 12, 2002.

On August 12, I met with Mr. Walp, Mr. Doran and Mr. Tucker to discuss the status of the Mustang investigation and other ongoing investigations. The two purposes of the meeting were (1) to obtain the latest, most reliable information about whether the suspected employee had committed fraud; and (2) to explain to Messrs. Walp and Doran specifically what the Laboratory needed from them in terms of providing reports on the status of the investigations so that the Laboratory could fulfill its national security obligations to the DOE and take whatever personnel actions were necessary.

During the August 12 meeting, I asked Mr. Walp for records that had been collected as part of the investigation. Mr. Walp specifically said he would not discuss what had been learned about the Mustang case and that he would not produce the records to me unless and until the FBI approved it. I explained that at a meeting on August 7, the FBI had already given the Laboratory permission to get information about the Mustang and the TA-33 incidents. It was apparent to me that Mr. Walp did not appreciate that as liaison for the Laboratory his duties included sharing information with senior Laboratory managers, not withholding information. I re-emphasized to Messrs. Walp and Doran the importance of their keeping their own investigation notes and providing that information to me as it was generated.

I believed that at this August 12 meeting, I had sufficiently explained OSI's liaison role to Mr. Walp and that there would be no further problems with getting current information from him and Mr. Doran. Although Mr. Walp agreed to provide me with the records and reports, he argued against having to do so. Nevertheless, there continued to be substantial delays in my receipt of written reports prepared by Messrs. Walp and Doran, and in some important cases I received no report of their investigative activities. Current information was necessary for Laboratory managers and me to do our jobs.

Casino Credit Card Incident

In early August 2002, in the course of an internal inquiry into purchase card use arising from the Mustang investigation, a Laboratory Purchase Card Administrator discovered that a Laboratory sub-contract worker had used her purchase card to buy gas and groceries and obtain cash advances at local casinos. The total suspected loss has been determined to be approximately \$2,000.

On August 12, 2002, the Purchase Card Administrator notified OSI of her discovery and Doran immediately opened an inquiry. The FBI was notified and FBI Special Agent Campbell attended the interview of the worker. On August 19, 2002, the worker admitted that she had used her purchase card to obtain cash advances at a casino, and that she had used the cash to gamble. Because she was a contract worker, and not a Laboratory employee, the Laboratory could not fire the worker. However, the worker's contract employer was immediately directed to remove the worker from the Laboratory, which it did. She is not eligible to work at the Laboratory either as an employee or as a contract worker.

I notified the DOE OIG of this case verbally on August 27, and in writing on September 12, 2002. Contrary to Mr. Walp's and Mr. Doran's assertions, there was no effort to cover up this matter. The matter was investigated, the appropriate agencies were notified, and the worker was removed from the work site. Efforts are under way to recover the misappropriated amounts from the contract employer.

The Forged Voucher Incident

In September 2002, a Laboratory employee reported to the Laboratory's Human Resources Division that an employee had wrongfully authorized, drawn and cashed a Laboratory check to herself for \$1,800.

It is my understanding that HR immediately referred the matter to S Division, so OSI could investigate. On September 23, the employee appeared at work, admitted to the misappropriation, tendered a check to reimburse the Laboratory for the entire amount of the misappropriation, and resigned. The Laboratory told the employee she might be criminally prosecuted, and made no agreements whatsoever about whether any other action would be taken against her. The record of the employment separation states that this was a "resignation in lieu of

discharge.” The employee is not eligible for re-employment at the Laboratory for a period of seven years. This matter was handled by the HR and S Divisions. I did not become aware of the case until after the employee had resigned, and did not have knowledge of the circumstances before the check was accepted.

Upon learning that the employee had resigned and tendered back the misappropriated funds, Mr. Walp told HR Deputy Division Leader Philip I. Kruger that he may have committed the federal criminal offense of obstruction of justice. Mr. Kruger consulted with me and asked my legal opinion about whether he had acted inappropriately or had committed the federal offense of obstruction of justice by allowing the resignation and repayment. I responded that in my opinion there was nothing illegal or inappropriate about how Human Resources had handled the matter, and that Mr. Walp was wrong in his assertions. By resigning, the employee had relinquished any right to file an internal grievance, as she could if she had been terminated. The Laboratory had recovered the misappropriated money. Nothing prevented law enforcement from going forward with criminal charges. The employee had admitted her guilt. The Laboratory treated the resignation as an involuntary termination for cause, and the employee is ineligible for rehire. The DOE OIG was informed of the matter, and the matter was referred to the DOE OIG for investigation.

This event contributed to the erosion of my confidence in Mr. Walp’s judgment and his ability to interact and communicate effectively with personnel at all levels at the Laboratory.

Media reports have suggested that because these employment terminations were not made public, there must have been some attempt to cover up their crimes. This allegation is incorrect. The Laboratory, as part of the University of California, substantially complies with the California Information Practices Act and does not disclose personal information, including performance assessments and corrective or disciplinary actions, to the general public, except under limited and specific circumstances. The Laboratory does not disclose to the general public the details of the basis for a termination or information about the circumstances leading to a resignation, unless that individual authorizes such a disclosure. By not disseminating the circumstances of individual personnel actions, the Laboratory is simply observing best employment practices and acting consistently with California law.

Purchase Card and Procurement Investigations

When the Mustang case surfaced, Mr. Salgado instructed me to lead a team to conduct an internal review of the Laboratory’s purchase card program. The team and I collected and reviewed relevant records, including purchase card procedures and memoranda from other agencies such as the U.S. Navy regarding their own experiences with purchase cards.

As a result of this internal review, the Laboratory instituted an immediate corrective action plan to mitigate misuse and abuse. On August 23, 2002, Associate Director of Administration Richard Marquez ordered specific revisions to the purchase card. The revised procedures included new requirements for purchasing authority, review and approval of monthly statements and training for cardholders and business team leaders. Mr. Salgado and I also recommended to Laboratory Director John Browne that an external review team be appointed to conduct a more comprehensive review of the purchase card program.

Director Browne requested University approval for an independent review. The University agreed and on August 16, 2002, UC Vice President John McTague instructed Director Browne to proceed with the proposal to establish an external review team to examine irregularities in the Laboratory's purchase card program. The team included auditors from the firm of PricewaterhouseCoopers ("PwC"). Former DOE Inspector General John Layton chaired the team, assisted by former Department of Labor Inspector General Charles C. Masten.

The team was charged with conducting a comprehensive review of the purchase card program. By charter, the external review team was to have access to all LANL documents and records. All Laboratory leaders were informed to cooperate fully with the team, provide the team documents and be interviewed as requested.

So as not to interfere with the FBI's ongoing investigations, the external review team's activities were carefully coordinated with the FBI, as evidenced by the numerous communications (meetings, telephone calls and correspondence) between the Laboratory and the FBI on this subject.

On August 22, 2002, Mr. Salgado, Mr. Tucker, Mr. Doran and I met with the FBI, to inform it about the external review team. We told the FBI that the team would be investigating fraud, waste and abuse in the purchase card program, including the Mustang case and the purchase of tools from G&G, a vendor in Albuquerque. We told the FBI that the team would conduct an end-to-end review of the purchase card program and a forensic evaluation of whether there had been any misappropriation. The FBI was invited to provide input so that its investigation would be coordinated with the external review team's investigation. We specifically discussed the boxes of documents that had been collected from the office of the suspect in the Mustang case and the fact that the external review team would review those documents as part of its investigation. The FBI agreed that it was appropriate for the external review team to review those documents. The FBI requested that the Laboratory preserve the documents as they would any other business record.

In September, October and November, there were correspondence and meetings between my office and the FBI to establish the external review team's interview list and to insure that it did not interfere with the FBI's investigation. By letter dated September 11, 2002, FBI Special Agent in Charge Andreas Stephens

concluded with the Laboratory's decision to have the external review team audit purchase card program records and, with advance approval, conduct interviews. My office provided the FBI with lists of Laboratory employees whom the external review team wished to interview and the FBI approved the list, with some exceptions.

Any allegation that the Laboratory was not cooperating with the FBI in the investigation of purchase card misuse completely ignores these numerous interactions between my office and the FBI. Indeed, Agent Stephens specifically expressed his gratitude to me for the Laboratory's continued cooperation in coordinating the investigations.

The OSI was reluctant to permit the external team access to the suspect's records, asserting that the records were FBI evidence. Mr. Walp permitted PwC auditor Kristin Rivera to examine the documents, but under such stringent conditions that it was difficult for the team to effectively review the material.

Eventually, Mr. Layton directed Mr. Masten (himself a former FBI agent) to go to OSI and determine whether the records appeared to be impounded by the FBI and whether the tape protecting the records was FBI tape. Mr. Masten inspected the records and determined that the FBI had not taped the records, that they were not FBI records, and that they had not been impounded by the FBI. After several phone calls, the records were transferred that day to the Office of Laboratory Counsel for the external review team to examine there, without restriction.

Thus, although the external review team did eventually get to review the documents it needed, it was only after a prolonged struggle with OSI, which appeared to mistakenly believe that its investigation work was immune from review and use by Laboratory managers. In my opinion, this demonstrates a fundamental misconception by Mr. Walp about his job duties and responsibilities. It is also inexplicable to me, because I had previously obtained FBI permission to review these records, and I had so informed Mr. Walp. This incident was one of the final factors that led to my request that Messrs. Walp and Doran be removed from their roles as liaison with the FBI.

The Employment Terminations of Messrs. Walp and Doran

Initially, I welcomed the opportunity to work with investigators with the backgrounds and experience of Messrs. Walp and Doran. However, as I continued to try to work with them on the purchase card and related investigations, I became increasingly disappointed and frustrated over my inability to secure the cooperation and assistance I expected from OSI. I frankly did not understand their reluctance to cooperate with what I perceived to be our common goals. Their resistance hampered my ability to do my job, which was to provide the FBI, the DOE and the University with accurate and timely information about possible misconduct, so those entities could make appropriate decisions regarding criminal prosecutions, national security, and employment matters.

It was never my purpose or intent to cover up or withhold any information, nor to impede the FBI or DOE from investigating any misconduct, and I never did so. In October 2002, following a meeting with the United States Attorney in Albuquerque, I concurred with Mr. Salgado's decision to remove Messrs. Walp and Doran from their roles as liaison with the FBI. They did not appear to understand that my office had a legitimate interest in obtaining the information necessary to determine the Laboratory's legitimate concerns. Instead, Messrs. Walp and Doran appeared to view me, the Office of Laboratory Counsel, and the purchase card review team as adversaries.

I did not make the decisions to terminate the employment of Messrs. Walp and Doran. However, it is clear that my complaints about their assistance and cooperation were important factors in the ultimate decision. I provided information and opinions about their performance, I expressed my frustration in working with them, I participated in discussions about their removal, I reviewed and commented on documents regarding their termination, I told Mr. Salgado I could not work with them on the assignment he had given me, and I provided legal advice to the Laboratory about the risks of terminating their employment.

Putting aside the concerns that I have expressed regarding the performances of Messrs. Walp and Doran, I do recognize that the circumstances these men confronted were less than ideal. Upon reflection, I realize that we at the Laboratory could and should have done more to provide Mr. Walp and Mr. Doran with a better understanding of the Laboratory and their roles, including an understanding of all the parties with a legitimate oversight interest at the Laboratory, and the importance of comity between these parties. If they had been provided with adequate guidance regarding the specifics of their job duties, perhaps they might have better appreciated the inter-relationship between law enforcement concerns and national security and other legitimate concerns. In retrospect, I believe the Laboratory should have attempted to work through the difficulties with Mr. Walp and Mr. Doran.

It has always been my sole intent to preserve and protect the law, and to provide my client, the University, with my best legal advice and services, to promote and protect the interest of the government in the performance of my job, and to uphold the ethics of my profession. I have tried very hard to do that, and I believe I have done so.

Thank you for the opportunity to present my views on these matters.